

Habitat Conservation Division Programmatic Consultation Guidance

The guidance presented herein is intended to provide initial advice to staff on how to complete programmatic consultation. It will be revised in light of further experience and should not be interpreted as a final statement on this topic, nor interpreted as a mandatory approach for staff or external customers. An alternative framework for programmatic consultation that is scientifically and legally credible will also be acceptable.

NOAA Fisheries Service
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NOAA Fisheries Guidance for PROGRAMMATIC CONSULTATION

Summary. Programmatic consultation may be informal or formal and addresses multiple agency actions on a program, regional, or other basis. The Endangered Species Act (ESA), consultation regulations, the Section 7 Handbook, and Habitat Conservation Division (HCD) policy guidance allow for and inform programmatic consultation. The Northwest Region (NWR) of the National Marine Fisheries Service (NOAA Fisheries) portfolio of completed consultations now includes dozens of informal and formal programmatic consultations and many more are in progress. Typical programs include federal land management, restoration, transportation, wetland and waterway alterations, and combinations of these activities, among others.

Programmatic consultation analyzes the combined effects of all the actions that make up a program, then presents that analysis and its conclusion in a single document. Individual actions that might otherwise be part of a program, but for which information necessary to complete an effects analysis is lacking, can be handled in separate, individual consultations. Similarly, NOAA Fisheries decides whether incidental take from programs can be exempted from ESA section 9 prohibitions in a programmatic incidental take statement. Even if such a section 7(o)(2) exemption is made, a subsequent ‘tiered’ review of individual project characteristics by the action agency, NOAA Fisheries, or both, may be required before take coverage will apply.

The primary benefits of programmatic consultation are more consistent use of conservation measures, the ability to address the effects of multiple activities at larger scales, efficient workload management, improved internal communication, better public relations, and a sharper vision of interagency consultation overall. The primary drawback of programmatic consultation concerns the availability of appropriate information for analysis and decision making. Developing adequate information to initiate formal programmatic consultation can be time consuming. However, the programmatic consultation process can account for information gaps and include processes to ensure the agencies possess adequate information to make scientifically sound and legally defensible decisions, when those decisions are made.

This guidance is intended to provide initial advice to staff on how to complete programmatic consultation. It will be revised in light of further experience and should not be interpreted as a final statement on this topic, nor interpreted as a mandatory approach for staff or external customers. An alternative framework for programmatic consultation that is scientifically and legally credible will also be acceptable.

WHAT IS PROGRAMMATIC CONSULTATION?

‘Programmatic consultation’ has been defined in different ways. Here, it means informal and formal consultation on two or more actions that are not necessarily joined by interrelatedness or interdependence, and so might have been consulted on separately.

Since the early 1990's, NOAA Fisheries periodically listed many evolutionarily significant units (ESUs) of West Coast salmonids as threatened or endangered species. Listings of ESUs with life histories in urban watersheds (especially in the late 1990s) dramatically increased the demand by action agencies for interagency consultation in keeping with their responsibilities under ESA section 7(a)(2). To respond to the increased demand for consultation, NOAA Fisheries aggressively pursued programmatic consultation. NOAA Fisheries has also been flooded with requests for participation in the conservation programs of fishery management councils, state agencies, local and regional governments and organizations, tribal governments, and private organizations. A significant part of this workload involves programs of actions that are minor and repetitive, with predictable environmental effects, and similar requirements for project approval. Individual review of each of these projects creates a substantial consultation workload for action agencies and NOAA Fisheries without producing additional benefits to the species. These characteristics define programs that are good candidates for programmatic analysis. Programmatic consultation can also allow efficient handling of multiple individual actions whose effects would be difficult to address through single project consultation, and better integrate the results of monitoring such actions. Finally, the results of programmatic consultation can be a useful training aid and benchmark for starting individual consultations.

STATUTORY, REGULATORY AND ADMINISTRATIVE GUIDELINES

The primary legal and administrative authorities guiding programmatic consultation are the ESA, its implementing regulations on interagency cooperation, the Section 7 Handbook, and HCD policy guidance.

ESA

Section 7(a)(1) provides, that the Secretary shall review other *programs* administered by him and utilize such *programs* in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out *programs* for the conservation of [listed] species . . . (emphasis added).

Section 7(a)(2) provides that each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence

of any [listed] species or result in the destruction or adverse modification of [critical] habitat . . .

16 U.S.C. 1536(a)(1), (2)

Consultation Regulations

"Action" means all activities or *programs of any kind* authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air. (emphasis added)

50 CFR §402.02

Section 7 Handbook¹

The following types of programmatic consultations are described in the Section 7 Handbook, Chapter 5 (Special consultation and reviews), for use with complex programs or specialized situations.

- *Proactive conservation reviews – Section 7(a)(1).* NMFS and other agencies have recognized the need for, but have yet to request, such a review of major program management or planning documents. The purpose would be to identify potential program effects and develop guidelines to minimize these effects. Subsequent "step-down" consultations would be completed once effects are connected to a specific action area.
- *National consultations – Section 7(a)(2).* These consultations affect many species over all or most of the country. Examples are the U.S. Department of Agriculture's Animal Damage Control program and the Environmental Protection Agency's pesticide registration program.
- *Regional or ecosystem consultations.* Action agencies occasionally request regional or ecosystem-based consultations. Consultations completed by the U.S. Army Corps of Engineers (COE) for regional general permits to restore stream roughness in Oregon and fish passage in Washington are examples of regional consultations. Joint consultations completed by the Bureau of Reclamation, Bonneville Power Administration, COE, U.S.

¹ U.S. Fish and Wildlife Service and National Marine Fisheries Service, *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* (March 1998 Final).

Fish and Wildlife Service (USFWS) and NOAA Fisheries on operation of the Federal Columbia River Power System are examples of ecosystem consultations.

- *Streamlined consultations.* This approach relies on interagency cooperation during the early stages of project planning to complete consultation quickly. An example is the consultation streamlining agreement by U.S. Forest Service, Bureau of Land Management, USFWS, and NOAA Fisheries. Under this agreement, interagency teams to review consultation initiation packages and affects determinations for consistency with program and management plan level consultations as a way to frame subsequent consultations.
- *Incremental step consultations.* When an agency is authorized to complete an action in incremental steps, it may request a separate consultation for each step using a special process. Consultation for each step must address the likelihood that subsequent steps may have adverse effects and several other factors that are unique to incremental consultation. This type of consultation is most appropriate for long-term, multistage activities that occur in discrete steps, such as the development of oil and gas resources on the Outer Continental Shelf.

HCD Policy Guidance²

In 1999, HCD published guidelines for programmatic consultation that established whenever an action agency submits a category of actions for consultation, the consultation may be structured as necessary for efficient handling, resource protection, and ESA compliance based on the following considerations:

- *Scoping.* The NOAA Fisheries consulting biologist initially decides whether the action agency's description of the program is clear about its scope and limits, and the standards and guidelines that apply to it.
- *Early involvement.* Whenever possible, the NOAA Fisheries consulting biologist should begin collaboration during the earliest planning stages to advise the action agency about information requirements, to help with preliminary effects determinations, and to guide the preparation of biological assessments.
- *Information burden.* The action agency should provide enough information to complete consultation. If circumstances make it advisable for NOAA Fisheries to assemble information, the biological opinion must be expressly conditioned on receipt of written assurances from the action agency explicitly committing to carrying out the program as described in the biological opinion.

² William Stelle, Jr., Rick Applegate, and Eileen Cooney. 1999. Guidelines for programmatic consultations. National Marine Fisheries Service, Northwest Region, Habitat Conservation Division Policy Guidance (September 24).

- *Risk management.* Consider whether individual actions need further scrutiny because the effects are uncertain. If so, the programmatic biological opinion may kick out those actions for individual, site-specific consultations.
- *Reinitiation of consultation.* Programmatic biological opinions should have an expiration date or other threshold or event triggers that will ensure the consultation has finite duration.
- *Monitoring.* Monitoring and evaluation requirements must be included that are commensurate with resource concerns and, if the program is substantial, should elicit information used for reinitiation triggers.

TYPES OF PROGRAMS

Actions included in a programmatic consultation can be as diverse as the mission and objectives of the federal agency that proposes them. The initial assessment by a NOAA Fisheries consulting biologist should consider whether sufficient information is available regarding the predictability of the effects that will be caused by the programmatic activities. This is an essential consideration to understand and evaluate programmatic activities. However, as a practical matter, programmatic consultations usually emerge from collaboration with action agencies that are familiar with the consultation process and who have a substantial and recurring consultation workload. Thus, programmatic consultations completed in NWR to-date can be easily grouped into the following categories.

- *Federal land management.* Examples of activities covered by programmatic consultation on federal land management include trail construction and maintenance, maintenance of pump chances and heliponds for fire suppression and dust abatement, maintenance of telephone right-of-ways, environmental education with instream activities, and some noncommercial vegetation treatments.
- *Restoration.* Placement of woody material, boulders or gravel, removal of passage barriers, and planting of riparian vegetation are examples of restoration activities covered by programmatic consultations with many different federal agencies.
- *Transportation.* Repairs and improvements of existing roads, bridges, culverts are often covered in transportation programmatic consultations. Widening shoulders, rebuilding or restoring surfaces, installing passing lanes, installing lane refuges, installing guide rails or barriers, and replacement of culverts that obstruct fish passage are typical road upgrades. In some cases, construction of new roads, bridges and culverts can also be covered.
- *Wetland and waterway alterations.* Each year, the COE issues hundreds of permits under the authority of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean

Water Act. Consultations on these programs have covered activities such as streambank protection, boating facilities, maintenance of existing water intakes and outfalls, and maintenance dredging.

- *Blended.* Most programmatic consultations cover a combination of land management, restoration, and transportation-related actions.

APPROACHES TO PROGRAMMATIC CONSULTATION

The interagency consultation process is based on identifying and analyzing the adverse effects of federal agency actions on the conservation of listed species, then avoiding or minimizing, and accounting for those effects. Programmatic consultations accomplish this using: (1) an informal concurrence process for ‘not likely to adversely affect’ (NLAA) actions that are not reasonably certain to cause take of listed species; (2) a ‘full’ programmatic approach for actions that are ‘likely to adversely affect’ (LAA) listed species and which may be exempted from take without further review; and (3) a ‘tiered’ programmatic approach for LAA actions that require subsequent project-specific review before a take exemption is applied. The choice of which approach, if any, may be applied to a particular program depends on whether adequate information is available at the beginning of the consultation to predict and manage any adverse effects caused by individual and combined program actions.

If actions analyzed as part of a programmatic consultation are found to be NLAA, consultation on those actions may be completed by issuing a standard concurrence letter. Alternatively, NOAA Fisheries may show the basis for concurrence in a biological opinion that covers the remaining LAA actions within the program. Whichever option is used, monitoring for the NLAA activities should typically be required.

The NOAA Fisheries requires that an incidental take statement be issued at the conclusion of all formal consultations for LAA actions, if take is reasonably certain to occur. Compliance with reasonable and prudent measures and terms and conditions specified in an incidental take statement exempts the action agency and its grantees or permittees, if any, from the ESA's section 9 prohibitions against take. Construction of an incidental take statement for a programmatic consultation is guided by the same considerations that distinguish the different approaches outlined below. If sufficient information is available to determine the biological effects of a ‘full’ programmatic consultation may be appropriate. In these cases, a programmatic biological opinion can be issued with a take statement that does not require further review for qualifying projects other than periodic, after-the-fact reporting. When project-specific information is necessary to the amount and extent of incidental take for individual projects, a ‘tiered’ programmatic consultation may be useful. The ‘tiered’ approach requires an additional subsequent project review step before the take exemption associated with an incidental take statement can be applied.

Because the scope of a programmatic consultation extends beyond an individual project, they may require special monitoring procedures to track the amount or extent incidental take. They are also more likely than individual consultations to require reinitiation because new information becomes available, to respond to adaptive management or new policy development, or to adjust to changes in the status of listed species or designated critical habitats. Similarly, as the number of programmatic consultations has grown, some actions are now covered in the same area by more than one programmatic opinion. Thus, programmatic consultations must be carefully monitored, updated, and consolidated whenever possible to ensure they continue to be internally adequate and externally consistent, reflective of current policy, and based on the best scientific and commercial information available. Inclusion of an explicit expiration date in each programmatic consultation will decrease the likelihood that incidental take will accumulate without being noticed, and increase the likelihood that timely updates are made as necessary. To be enforceable, the expiration date must also be repeated in an appropriate place in the reasonable and prudent measures and terms and conditions.

For these reasons, regardless of which approach is used, all programmatic consultations must have these three specific safeguards to ensure they remain informed, accountable, credible, and efficient: (1) An expiration date or ‘sunset clause’ to rescind the opinion by a specific date, typically three to five years after issuance; (2) a comprehensive program of annual monitoring and reporting to assess the level of program activity, confirm that assumptions made during consultation were correctly applied, and to ensure that effects were correctly predicted; and (3) annual coordination meetings between NOAA Fisheries and the action agency to ensure that the objective of avoiding and minimizing take from permitted activities is being accomplished, that the incidental take statement (if any) is consistent with best available science, and to discuss any action necessary to make administration of the programmatic consultation more effective or efficient.

‘Full’ Programmatic Consultation

These consultations are distinguished by well-defined activity types with adverse effects that are minor, repetitive, and predictable. Further review of these actions through an individual consultation at the project scale would produce the same overall result and not provide any additional conservation benefit. The biological opinion used to conclude these consultations will be issued with an incidental take statement having reasonable and prudent measures and terms and conditions that exempt subject actions from the take prohibition without requiring further project-level review by NOAA Fisheries.

The scope of qualifying actions covered in a ‘full’ programmatic consultation is often limited by exclusionary terms and conditions that ‘kick out’ actions for a project level consultation if they will (1) affect especially sensitive habitats, such as spawning areas, or (2) are likely to have unpredictable effects because the project design cannot be adapted to prescriptive terms and conditions. The analysis of those effects must be well within the scope of information available and, in most cases, based on broad experience gained through many individual consultations for the subject actions. The effects themselves must prevent a low risk to listed species and the

action agency must be able to confidently avoid or minimize take by applying prescriptive design criteria and, if long-term adverse effects are expected, compensatory mitigation. This approach gives the action agency responsibility to ensure that an particular action is indeed qualified for coverage, and accepts a synthesis of project-level monitoring by the action agency as sufficient to track changes in the environmental baseline, aggregated take, and status of the listed species that may be attributed to the underlying program.

In very limited circumstances, this approach may provide for post-consultation review of a minor departure from standard project design criteria in an otherwise qualified project. This type of review takes place at the action agency's request to confirm that effects of the modified project and any additional take that may result are still within the scope of the programmatic consultation without consuming the full resources necessary to complete an individual consultation. For example, an action agency may request an extension of the standard in-water work period, and NOAA Fisheries may approve or deny that request depending on project specific considerations, provided that the reasons for the request and the basis for its resolution are adequately documented in the administrative record. The Seattle District of the Corps of Engineers uses a Specific Project Information Form (SPIF) for this purpose. This process is similar to the streamlined reply NOAA Fisheries provides whenever it is asked for post-consultation approval of a very minor project modification. In the 'full' programmatic context, it may be possible and desirable to use terms and conditions to clearly identify which elements of an action, if any, may have this flexibility. This type of post-consultation review is distinguishable from the 'tiered' approach, discussed below, because it only occurs at the request of the action agency and is generally much narrower in scope.

'Tiered' programmatic consultation

'Tiered' consultation expands the range of programmatic analysis to include repetitive actions whose effects cannot be fully analyzed without project-specific information. The requirement to avoid or minimize incidental take resulting from these actions is satisfied by deferring the final analysis of project effects and identification of appropriate take minimization measures until after project-specific design information is developed or confirmed. The biological opinion used to conclude these consultations may be issued with an incidental take statement that (1) is 'partially tiered' and includes an incidental take exemption for qualifying actions but requires a post-consultation review of each project to ensure that some or all parts of the individual action are qualified, or (2) 'fully tiered' stating that although no incidental take can be anticipated at the program level, an individual consultation is still necessary for each project-level element of the program that is LAA. In either case, a tiered programmatic consultation must ensure that systems are in place to complete an additional increment of project-level analysis before the take exemption will apply and to document the results of those analyses in project-level administrative records, such as streamlined letters or project biological opinions.

Plan-level documents that cover large areas, such as federal land management plans, are examples of actions that may be appropriate for 'fully tiered' consultation. At this scale of analysis, the particular effects that individual actions will have on listed species at the site level

generally cannot be meaningfully discerned. Therefore, although ‘fully tiered’ consultations on plan-level documents must ensure that decisions based on them will not result in jeopardy or adverse modification of critical habitats, the greatest practical benefit of this type of consultation may be the opportunity it presents to develop the relationships, process, and information requirements necessary to complete subsequent project-level consultations as effectively and efficiently as possible.

In contrast, a ‘partially tiered’ programmatic consultation is similar to ‘full’ programmatic consultation in that this approach also assumes that subject actions, their effects, and measures necessary to avoid or minimize any adverse effects, can be well-defined using the information at hand. What distinguishes the ‘partially tiered’ approach is a requirement that each action must be further reviewed by NOAA Fisheries to verify key attributes of the proposed activity and action area before reasonable and prudent measures and terms and conditions developed during the programmatic consultation can be applied. The ‘partially tiered’ approach may appear to hold action agencies more accountable than a ‘full’ programmatic while requiring less work than multiple project-level consultations. However, those benefits will be unnecessary or illusory if the action agency is collaborative or if the additional level of review is cursory or poorly defined. Thus, this approach may be most useful when experience suggests inconsistent compliance with previous consultations, or the additional level of review can be focused on a narrow technical issue within the special expertise of NOAA Fisheries.

PROGRAMMATIC CONSULTATIONS IN PRACTICE

Programmatic consultation in the NWR has increased rapidly since its first use in 1995 (Table 1). Of those, almost as many consultations were informal concurrences with proposed actions found NLAA as were formal consultations resulting in biological opinions. The number of ‘programs’ identified by action agencies per consultation ranged from two to 17, with restoration being the most common type of action, followed closely by transportation and land management actions. Consultations for wetland and waterway alteration permits were the least common type of program.

CONTRIBUTION TO THE NOAA FISHERIES PROGRAM

Regardless of approach, programmatic consultation must serve the purpose of site-specific consultation. The approaches described above show how this end can be accomplished when action agencies provide excellent information. Even with less than ideal levels of information about projects and their effects, programmatic consultations can be structured to account for uncertainty and proceed through tiering to project-level assessments and incidental take statements. By focusing attention on the shared characteristics of many agency actions with similar effects, programmatic consultation can encourage development of a more efficient and consistent approach to consultation overall. Because programmatic consultations may span geographic boundaries and call on a variety of expertise, they demand an unusual degree of

agency internal communication. Programmatic biological opinions that call for tiering to further project-level assessments contain effects analyses and conservation measures that are more generally applicable than those of individual, site-specific consultations. This characteristic makes them more robust for training new biologists and other interested parties in the analysis and calibration of the effects of proposed actions, and ways to avoid and minimize adverse effects. Similarly, programmatic consultations are powerful tools for workload management because they eliminate the need for further deliberation or action on many proposed projects where such action would not produce any further conservation benefit. Programmatic consultations are also useful for establishing a common set of expectations between consultation agencies and interested public. Together, clear expectations and consistent outcomes can significantly reduce conflicts over listed species and their habitat, thus improving public relations and creating new opportunities for further advances in listed species conservation.

RECOMMENDATIONS FOR FURTHER WORK

New programmatic consultations should always begin with a review of existing programmatic efforts that cover the same type of actions or action area. Then, whenever possible, consolidate actions and areas into the scope of the new programmatic document. This will help to ensure that the best and most recent scientific information is always in use, that the conservation benefits of programmatic consultation are not delayed or lost, and that region-wide consistency is improved.

The best opportunity to increase the use of programmatic consultation is to help action agencies identify more kinds of actions that may qualify. This is especially true for actions such as fish passage improvement and culvert replacement that are authorized, funded or carried out in substantially the same way by many different action agencies. It also applies to many actions such as most Farm Bill conservation programs that have not been the subject of programmatic consultation so far. In other cases, the geographic coverage of an existing programmatic consultation may be extended simply by repeating the analysis for larger or additional administrative units. Also, as technical and consultation guidance matures, some actions may become ripe for programmatic consultations that were deemed unsuitable in the past, such as mitigation banking, gravel mining, or labeling of pesticides.

More innovative applications of programmatic consultation are also possible. The "no take" approach to formal consultation for review of major program management or planning documents could be developed to identify and minimize program effects as envisioned by ESA section 7(a)(1). This approach may also be adapted to analyze the effects of a conservation program proposed to unify management of federal and non-Federal lands within a single hydrological unit, and thus could benefit from an analytical bridge between the interagency consultation requirements of ESA section 7(a)(2) and the habitat conservation planning provisions of section 10(a)(1)(B).

TABLE 1. National Marine Fisheries Service, Northwest Region, Representative Programmatic Consultations

Prepared March 3, 2003

Programmatic Opinion or Concurrence Letter Title	Action Agency(ies)	Geography Included	Originating NMFS Office	Date Completed
1. Implementation of Interim Strategies for Managing Anadromous Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho and Portions of California (PACFISH); Biological Opinion	U.S. Forest Service and Bureau of Land Management	Eastern Oregon and Washington, Idaho, and Portions of California	Oregon Habitat Branch Office	1/ 23/1995
2. Endangered Species Act Section 7 Biological Opinion on the Land and Resource Management Plans for the Boise, Challis, Nez Perce, Payette, Salmon, Umatilla, and Wallowa-Whitman National Forests	U.S. Forest Service	Eastern Oregon and Washington and Central Idaho	Idaho Habitat Branch	3/1/1995
3. Amendment to January 23, 1995 PACFISH biological opinion	U.S. Forest Service Bureau of Land Management	Eastern Oregon and Washington, Idaho, and Portions of California	Oregon Habitat Branch Office	10/8/1996
4. Section 7 Consultation on the Effects of Continued Implementation of Land and Resource Management Plans on Endangered Species Act Listed Salmon and Steelhead in the Upper Columbia and Snake Rivers	U.S. Forest Service Bureau of Land Management	Eastern Oregon and Washington, and Central Idaho	Idaho Habitat Branch Office	6/22/1998
5. Central Idaho Expedited Consultation Pilot Process, Bitterroot National Forest (Idaho portion), Clearwater National Forest, and Nez Perce National Forest, and Cottonwood Resource Area - Bureau of Land Management	U.S. Forest Service	North Central Idaho	Idaho Habitat Branch (joint with USFWS)	6/28/00
6. Revision of the Central Idaho Expedited Consultation Pilot Process, Bitterroot N.F. (Idaho portion), Clearwater N.F., Nez Perce N.F. and Cottonwood Resource Area - BLM	U.S. Forest Service	North Central Idaho	Idaho Habitat Branch (joint with USFWS)	8/10/01
7. Section 7 Consultation on Boise, Payette, and Sawtooth National Forests' Land and Resource Management Plans Revision	U.S. Forest Service	South Central Idaho	Idaho Habitat Branch (joint with USFWS)	In Progress
8. Section 7 Consultation on Idaho Water Quality Standards	Environmental Protection Agency	Idaho	Idaho Habitat Branch (joint with USFWS)	In Progress

9. Biological Opinion on Effects of U.S. Fish and Wildlife Jobs-in-the-Woods Program on Umpqua River Cutthroat Trout, Southern Oregon/Northern California Coho, Klamath Mountains Province Steelhead, Oregon Coast Coho, Oregon Coast Steelhead, and Lower Columbia Steelhead, Western Oregon	U.S. Fish and Wildlife Service	Southern Oregon and Northern California	Oregon Habitat Branch Office	3/4/1997
10. ESA Section 7 Consultation for Programmatic Actions in the U.S. Forest Service - Gifford Pinchot National Forest, Mt. Hood National Forest, Columbia River Gorge National Scenic Area, and Salem District Bureau of Land Management that are Likely to Adversely Affect Lower Columbia River steelhead, Lower Columbia River chinook salmon, Upper Willamette River chinook salmon, Columbia River chum salmon, Southwestern Washington/Columbia River cutthroat trout, and Southwest Washington/Lower Columbia River coho salmon	U.S. Forest Service and Bureau of Land Management	Portions of Oregon and Washington	Oregon Habitat Branch Office	6/3/1999
11. ESA Section 7 Consultation for Programmatic Actions in the U.S. Forest Service - Siuslaw National Forest, Salem District Bureau of Land Management (BLM), and Eugene District BLM, that are Likely to Adversely Affect Oregon Coast Coho Salmon within the Oregon Coast Range Province (OSB1999-0012)(June 4, 1999)	U.S. Forest Service and Bureau of Land Management	Western Oregon	Oregon Habitat Branch Office	6/4/1999
12. ESA Section 7 Consultation for Programmatic Actions in the Willamette, Siuslaw, and Mt. Hood National Forests, and Salem and Eugene Districts Bureau of Land Management that are Likely to Adversely Affect Upper Willamette River Steelhead and Upper Willamette River Chinook Salmon within the Willamette Province, Oregon	U.S. Forest Service and Bureau of Land Management	Western Oregon	Oregon Habitat Branch Office	7/28/1999
13. Biological Opinion on the Oregon Conservation Reserve Enhancement Program, U.S. Department of Agriculture, Farm Services Agency	USDA, Farm Services Agency	Oregon	Oregon Habitat Branch Office	6/2/1999
14. Extension of the June 4, 1999 Programmatic Biological Opinion Incidental Take Statement for Forest Service, BIA/Coquille Indian Tribe and BLM Actions Affecting Oregon Coast Coho Salmon and Adoption of the June 4, 1999 Programmatic Conference Opinion on Proposed OC Coho Salmon Critical Habitat as a Biological Opinion for Designated OC Coho Salmon Critical Habitat	U.S. Forest Service, Bureau of Land Management, and Bureau of Indian Affairs	Western Oregon	Oregon Habitat Branch Office	6/2/2000

15. Issuance of New Incidental Take Statements for Three Programmatic Biological Opinions and Adoption of Three Conference Opinions on Proposed Critical Habitat as Biological Opinions for Designated Critical Habitat	U.S. Forest Service, Bureau of Land Management	Portions of Oregon	Oregon Habitat Branch Office	6/5/2000
16 Biological Report – Fish Passage Remediation Program Replacement and Retrofitting of Culverts and Stream Channel Modification in Western and Central Oregon, Federal Highways Administration and designated non-Federal representative, Oregon Department of Transportation	Federal Highways Administration and Oregon Department of Transportation	Central and Western Oregon	Oregon Habitat Branch Office	1/22/2001
17. Biological Opinion on Corps of Engineers’ Programmatic Consultation for Permit Issuance for 15 Categories of Activities in Oregon	Army Corps of Engineers	Oregon	Oregon Habitat Branch Office	3/21/2001
18. Endangered Species Act Section 7 Formal Programmatic Consultation and Magnuson-Stevens Act Essential Fish Habitat Consultation on Bureau of Land Management, Forest Service, and BIA/Coquille Indian Tribe Actions Affecting Southern Oregon/Northern California Coho, Oregon Coast Coho Salmon, and Oregon Coast Steelhead	U.S. Forest Service, Bureau of Land Management, and Bureau of Indian Affairs	Western Oregon	Oregon Habitat Branch Office	7/12/2001
19. Amendment of Terms and Conditions in July 12, 2001 Biological Opinion for Section 7 Formal Programmatic Consultation and Magnuson-Stevens Act Essential Fish Habitat Consultation on Bureau of Land Management, Forest Service, and BIA/Coquille Indian Tribe Actions Affecting Southern Oregon/Northern California Coho, Oregon Coast Coho Salmon, and Oregon Coast Steelhead	U.S. Forest Service, Bureau of Land Management, and Bureau of Indian Affairs	Western Oregon	Oregon Habitat Branch Office	8/8/2001
20. Biological Opinion for Endangered Species Act Formal Section 7 Consultation and Formal Conference, and Magnuson-Stevens Act Essential Fish Habitat Consultation, for the Oregon Department of Transportation Program of Maintenance Actions for Urgent and Emergency Repairs on Cut and Fill Slopes in Western Oregon	Federal Highway Administration	Western Oregon	Oregon Habitat Branch Office	1/31/02
21. Phase I, Various Marine Activities, Programmatic Concurrence letter	Army Corps of Engineers	Washington State	Washington State Habitat Branch Office	2001
22. Phase II, Fish Passage Biological Opinion	Army Corps of Engineers	Washington State	Washington State Habitat Branch office	2001

23. Programmatic “No Effect” Determination for NMFS Funding Action Passing Monies to the Coastal Salmon Restoration Funding (CRF) Board	National Marine Fisheries Service	Washington State	Washington State Habitat Branch Office	2000
24. U.S. Fish and Wildlife Service Programmatic Aquatic Habitat Restoration Activities Biological Opinion	U.S. Fish and Wildlife Service	Washington State	Washington State Habitat Branch Office	2/2002
25. Standard Local Operating Procedures for Endangered Species (SLOPES) for certain activities requiring Department of Army Permits in Oregon and the North Shore of the Columbia River	U.S. Army Corps of Engineers	Oregon and North Shore of the Columbia River	Oregon Habitat Branch Office	6/14/02
26. Informal Consultation Green Duamish Ecosystem Restoration Program (50 projects - 10 yr program)	U.S. Army Corps of Engineers	Western Washington	Washington Habitat Branch Office	April 10, 2001*
27. Washington Department of Transportation Informal Consultation Statewide 9 Activities	Washington Department of Transportation	Statewide in Washington State	Washington Habitat Branch Office	July 26, 2002*
28. Federal Transit Administration Informal Consultation Statewide (Construction-related activities under NEPA Categories)	Federal Transit Administration	Statewide in Washington State	Washington Habitat Branch Office	November 13, 2002*
29. Minor Diversion Screen Installations for the Walla Walla Basin, Walla Walla and Columbia Counties, Washington	Bonneville Power Administration	Portions of Washington State	Washington Habitat Branch Office	September 25, 2002
30. Oregon Department of Transportation Emergency and Urgency Repairs on Cut/Fill Slopes in Western Oregon Programmatic	Oregon Department of Transportation	Western Oregon	Oregon Habitat Branch Office	January 31, 2002*
31. Oregon Department of Transportation Informal on Guidelines for Routine FTA Construction Activities in Oregon and Idaho Programmatic	Oregon Department of Transportation	Oregon and Idaho	Oregon Habitat Branch Office	August 12, 2002*
32. U.S. Forest Service Sudden Oak Death Treatment in Southwest Oregon	U.S. Forest Service	Southwestern Oregon	Oregon Habitat Branch Office	August 30, 2002*
33. Bureau of Indian Affairs Warm Springs Reservation Projects Programmatic	Bureau of Indian Affairs	Warm Spring Indian Reservation	Oregon Habitat Branch Office	April 12, 2002*
34. U. S. Forest Service and Bureau of Land Management Programmatic Consultation in Northwestern Oregon, Four Categories (NLAA)	U. S. Forest Service and Bureau of Land Management	Northwestern Federal Lands in Oregon	Oregon Habitat Branch Office	February 25, 2003*

35. U.S. Forest Service and Bureau of Land Management Programmatic Consultation in Northwestern Oregon, Ten Categories (LAA)	U. S. Forest Service and Bureau of Land Management	Northwestern Federal Lands in Oregon	Oregon Habitat Branch Office	February 25, 2003
36. Federal Highway Administration Programmatic Consultation for Statewide Drilling, Surveying, and Hydraulic Engineering Activities in Oregon	Federal Highway Administration	Statewide in Oregon	Oregon Habitat Branch Office	February 6, 2003
37. Standard Local Operating Procedures for Endangered Species (SLOPES) for Certain Activities Requiring Department of Army Permits in Oregon and the North Shore of the Columbia River	U.S. Army Corps of Engineers	Statewide in Oregon and Southern Washington State	Oregon Habitat Branch Office	June 14, 2002 Amendment letter August 14, 2002
38. Trail Maintenance Activities - Salmon Challis National Forest	Salmon-Challis National Forest	Northeast Idaho	Idaho Habitat Branch	02/2003*
39. Bureau of Land Management Salmon and Challis Field Office's 2002 Noxious Weed Control Program	Bureau of Land Management Salmon and Challis Field Office's	Northeast Idaho	Idaho Habitat Branch	10/18/02*
40. Bureau of Land Management Salmon and Challis Field Office's 2002 Noxious Weed Control Program for the 2003 Spray Season	Bureau of Land Management Salmon and Challis Field Office's	Northeast Idaho	Idaho Habitat Branch	02/12/03*
41. 2002 Herbicide Treatment of Noxious Weeds on Lands Administered by the Salmon - Challis National Forest	Salmon-Challis National Forest	Northeast Idaho	Idaho Habitat Branch	9/16/02*
42. 2002 Herbicide Treatment of Noxious Weeds on Lands Administered by the Salmon - Challis National Forest for the 2003 Spray Season	Salmon-Challis National Forest	Northeast Idaho	Idaho Habitat Branch	12/12/02*
43. Fire Suppression & Prescribed Natural Fire Activities Programmatic Upper Salmon River Sub Basin	Salmon-Challis National Forest & Bureau of Land Management Salmon & Challis Districts	Northeast Idaho	Idaho Habitat Branch	05/03/02*

44. Upper Selway River - (programs and individual actions; programs include noxious weeds, facility maintenance, fire management, stream inventory, road maintenance/ reconstruction, trail maintenance/reconstruction)	Bitterroot National Forest	North Central Idaho	Idaho Habitat Branch (joint with USFWS)	3/26/2001*
45. South Fork Salmon River Section 7 Watershed (programs and individual actions)	Payette National Forest	Southwest Idaho	Idaho Habitat Branch	8/9/2001*
46. Middle Fork Salmon River and Main Salmon Tributaries Southeast Section 7 Watersheds (programs and individual actions)	Payette National Forest	Southwest Idaho	Idaho Habitat Branch	8/9/2001*
47. Little Salmon River, Deep Creek, Main Salmon Southwest Section 7 Watersheds (programs and individual actions)	Payette National Forest	Southwest Idaho	Idaho Habitat Branch	8/9/2001*
48. Middle Salmon and South Fork Salmon River Assessment Areas (programs and individual actions)	BLM - Cottonwood	Southwest Idaho	Idaho Habitat Branch	11/8/2000*
49. Clearwater River Assessment Area (programs and individual actions)	BLM - Cottonwood	North Central Idaho	Idaho Habitat Branch (joint with USFWS)	10/2/2000*
50. Lower Snake Assessment Area (programs and individual actions)	BLM - Cottonwood	North Central Idaho	Idaho Habitat Branch (joint with USFWS)	10/4/2000*
51. Little Salmon River Assessment Area (programs and individual actions)	BLM - Cottonwood	North Central Idaho	Idaho Habitat Branch (joint with USFWS)	6/28/2000*
52. Snake River Assessment Area (programs and individual actions)	BLM - Cottonwood	North Central Idaho	Idaho Habitat Branch (joint with USFWS)	11/1/2000*
53. 2002 Noxious Weed Treatment	Cottonwood BLM	North Central Idaho	Idaho Habitat Office	7/11/02
54. BLM Travel Management	Cottonwood BLM	North Central Idaho	Idaho Habitat Office	½7/2003*
55. COE 404 Nationwide Permit Program	U.S. Corp of Engineers	North Central Idaho	Idaho Habitat Office	In Progress
56. 2003 Noxious Weed Treatment	Cottonwood BLM	North Central Idaho	Idaho Habitat Office	In Progress
57. Ongoing and Proposed Actions in the Potlatch River, Lolo Creek, and Lochsa River Watersheds (programs and individual actions)	Clearwater National Forest	North Central Idaho	Idaho Habitat Office	8/28/98*

58. Nez Perce National Forest ongoing actions subject to screening for unacceptable risk of adverse effects (programs and individual actions)	Nez Perce National Forest	North Central Idaho	Idaho Habitat Office	5/19/99*
59. Consultation on Time-Sensitive Actions and Programs Within Watershed Biological Assessments for the Lower Selway River and South Fork Clearwater River Subbasins (programs and individual actions)	Nez Perce National Forest	North Central Idaho	Idaho Habitat Office	8/4/99*

* Informal consultation, not listed on NOAA Fisheries Website. For a copy, please contact the Habitat Branch Office originating the document.

APPENDIX A

Habitat Conservation Division Policy Guidance
Guidelines for Programmatic Consultations
September 24, 1999

NATIONAL MARINE FISHERIES SERVICE, NORTHWEST REGION

HABITAT CONSERVATION DIVISION POLICY GUIDANCE

Guidelines for programmatic consultations

I. Introduction

Some section 7 consultations involve a large number of similar, relatively minor actions. Others may be quite broad and involve similar but highly significant actions. Questions have arisen about how these situations can be handled efficiently while ensuring protection for the resource and complying with the Endangered Species Act. This guidance document outlines an approach to this problem that recognizes the diversity of agency practice, but structures programmatic consultations so that NMFS Habitat Division can make meaningful evaluations under section 7.

These are general guidelines. They will apply differently to programs consisting of a series of minor actions (e.g., painting picnic tables) as opposed to programs consisting of a series of highly significant actions (e.g., operation of hydropower dams). However, the guidelines are meant to apply to programmatic consultations generally pending development of more specific guidance.

Under this approach, NMFS sees it as the action agency's responsibility to identify the actions on which the action agency wants to consult. In deciding to submit a category of actions to NMFS for consultation, we would understand the action agency to be saying that it plans to make a decision about a certain category of actions. At the conclusion of the consultation, several outcomes are possible: the agency may decide to handle these matters in a routine way without further formal action (e.g., a crew is detailed to paint tables in a particular area without any formal agency "decision" other than a supervisor's order on that day); it may alter the program in light of ESA concerns (e.g., during the course of consultation issues concerning a programmatic action arise and the action agency sends NMFS a letter further defining the action); or it may engage NMFS in a subsequent, more detailed consultation. In all events, the action that is the subject of the consultation is the action the agency initially brings to NMFS, and ends with the decision (formal or informal) the action agency makes after the consultation.

II. Standards and guidelines.

1. Scoping. The NMFS consulting biologist must make an initial determination whether the action agency's description of the program is clear about its scope and limits, and the standards and guidelines that apply to it. We should not wait until a consultation package is received to communicate this, however. Particularly with programmatic consultations, NMFS should give the action agency early notice of the information NMFS needs to make an evaluation. Where we see opportunities to package things in different

ways to facilitate analysis and work load – perhaps treating certain things programmatically and other things individually – the earlier we say so, the better.


2. Supplying information on the program. If the action agency does not provide enough information, NMFS may request more information or may invest its own time in assembling it. Having NMFS supply this information is less desirable from a management standpoint, and it raises a legal concern whether the action agency is providing sufficient assurance that it will actually implement the action described. Nevertheless, there may be circumstances in which it is advisable. If this route is taken, the legal concern can be addressed by expressly conditioning the biological opinion on the receipt of a letter from the action agency explicitly committing to implement the program as described in the biological opinion with copies of the letter going to agency personnel. This procedure was used in connection with the 1998 steelhead biological opinion on PACFISH lumps.

3. Risk management. Consider whether there should be further scrutiny of individual actions. For example, the biological opinion might kick out certain programs for site-specific biological opinions where the effects of those actions are especially hard to predict.

4. Reinitiation of consultation:

a. Timing. Consider how the life of the biological opinion should be limited: a sunset clause should normally be included, for example, and/or specific thresholds or events that trigger re-initiation of consultation.

b. Monitoring and evaluation. Impose monitoring and evaluation requirements. If a program is for a limited time period or is clearly inconsequential, the biological opinion may require little monitoring and reporting. If the program raises concerns, monitoring and evaluation requirements should be designed can be used to elicit information relevant to factors that would trigger re-consultation.



William Stelle, Jr., Regional Administrator

Rick Applegate, Assistant Regional Administrator



Eileen Cooney, General Counsel

Date: September 24, 1999